the public policy against affording protection to possible fraud, coercion, or forgery. *Friend's Estate*, 209 Pa. 442, 58 Atl. 853; *Rouse* v. *Branch*, 91 S. C. 111, 74 S. E. 113. See *Chew's Appeal*, 45 Pa. 228, 232. This policy appears to exist, and wherever possible conditions should be construed to apply only to unreasonable contests. If, however, a condition seems clearly intended to apply to all contests, it is submitted that it must be held entirely inoperative. It is true as a general proposition that where the testator's intention cannot operate to its full extent, it should take effect as far as possible. 2 JARMAN, WILLS, 6 Eng. ed., p. 2212. But this is subject to the qualification that the provisions introduced by the testator cannot be remoulded by the court. If an inseparable provision is void as a whole, no single part of it will be enforced separately. *Root* v. *Stuyvesant*, 18 Wend. (N. Y.) 257, 310; *Leake* v. *Robinson*, 2 Mer. 363, 390; *Ker* v. *Hamilton*, 6 Vict. L. R. Eq. 172. See 9 HARV. L. REV. 242. *Cf. Edgerley* v. *Barker*, 66 N. H. 434, 31 Atl. 900. A condition still broad enough to cover all contests, after the limit of construction has been reached, would appear to fall within the principle of these cases.

BOOK REVIEWS

American Contributions to Jurisprudence. — In the field of jurisprudence we have until very recently drawn our ideas from abroad. Not only that, but we have imported such foreign ideas as finished products and attempted very little creative adaptation to our own needs. In the beginning the civilians, by way of France and England, supplied our juristic market. More recently we have drawn on Germany. This indiscriminate importation of foreign ideas is but natural so long as we did not vigorously realize that a philosophy of law is the practical concern of lawyers, because some philosophy, consciously or unconsciously, underlies the administration of every legal system. Once this is realized the largest impulse is given to an endeavor to work out a philosophy of law from the mass of our own jural material, in the light of our own history, designed for our own particular needs. Of course, this involves drawing on the experience of other countries and other systems of laws in so far as the administration of law everywhere is an expression of the ideal of justice. This is so particularly in the present day interdependence of the world. But the conscious pursuit of a native philosophy of law, by an intensive regard for differences of time and place and circumstance, will avoid the dangers of mechanical uniformity and the inadequacies of an aspiring but not all-inclusive internationalism.

Such a philosophic movement is taking a decided part in the present readjustment of our legal system, and to a promising degree it is manifesting itself in the practical, everyday decisions of our courts throughout the whole field of law, — criminal law, property law, torts, public service law, constitutional law. Not only our own legal thinking, however, is it affecting. It is a matter of profound significance in the juristic history of this country that we are actually beginning to export ideas. A very striking acknowledgment of this fact has recently been made by a distinguished German jurist, Professor Rudolf Leonhard, in a review of several essays of Professor Roscoe Pound (*Archiv für Rechts- und Wirtschaftsphilosophie*, Band VIII, Heft 1). This follows closely on Professor Leonhard's translation of Holmes's Common Law. These articles by Professor Pound [1] are chapters from his forthcoming work

[1] Justice According To Law, — 13 COL. L. REV. 696; 14 *ib.* 1, 103.
The End of the Law as Developed in Legal Rules and Doctrines, 27 HARV. L. REV. 195.

on Sociological Jurisprudence which is eagerly awaited. As a penetrating survey of the contribution America has made through Professor Pound, a translation of Professor Leonhard's critique cannot fail to interest the profession. After an introductory word, Professor Leonhard proceeds as follows:

"These essays afford a valuable foundation for a supranational, or rather bird's-eye comparison of modes of thought which either repeat themselves in the legal system of different nations or are differentiated from one another because of differences in their conditions of life. Such a comparative method involves not merely a reciprocal exchange and an approach toward future unity; it also arouses the consciousness that a sense of spiritual kinship has already been achieved through the course of history.

"Just as in each country the history of the law and the existing legal system are juxtaposed, so we may compare the historical development of different legal systems with a supranational system of law, which would afford a survey of the main forms of the separate legal systems. In both these branches of investigation the writer has sketched a program in bold and keen strokes, the detailed execution of which may well entice all who desire to build a general jurisprudence on the solid foundation of experience and not to derive it from *a priori* principles. The author deals with comparative legal history in the REVIEW of his own university, with comparative juristic philosophy, in the COLUMBIA LAW REVIEW. Along these lines more is promised us, but what he has already furnished is an entirety worthy of attention.

"As a point of departure let us take the related conclusions of both essays, for they concern two tendencies which recently have become very active with us: sociological jurisprudence and the school of judicial freedom (*freies Recht*). With us, at times, both are mentioned in the same breath, as, for instance, by Oertmann, in his *Rechtsordnung und Verkehrssitte*. It is interesting therefore to note how sharply Pound differentiates them. He praises one and combats the other. In this result his philosophic analysis harmonizes with his historical analysis.

"The latter finds strong support in Jhering, who enjoys much authority in America. The very name given to his treatise, 'End of Law,' shows this. On the other hand, Pound does not dwell on the many individual purposes which give law its manifold content. He confines himself to the dominant ultimate purpose which gives to law, in its various stages of development, its characteristic feature. He therefore seeks a history of this ultimate purpose; the shifting change in this purpose being his point of departure. In this investigation he does not confine himself to the law of any one people. On the contrary, like unto the eagle hovering above the clouds, he scans the various juristic developments of all civilized nations in order to ascertain, through a comparative legal history, the common laws of evolution. He draws a particularly close parallel between the Roman and the English law in which, as I believe, similarities unduly tend to overshadow differences.

The development of the legal system discloses five stages: archaic law, strict law, equitable and natural law, the maturity of the law, and finally the socialization of law, which is described with some reliance on Jhering. Peace at any price enforced through unlimited judicial discretion is the purpose of archaic law. In the second period, formalism reigns as the guardian of liberty (following Jhering). In the third period, a reaction sets in against formalism in the direction of equity and morality. The maturity of the law aims at certainty and equality by applying a system of concepts. Finally, in the present period, the social interest back of each right is sought to be ascertained in order that the end of the law may be founded not merely on moral considerations, as in the period of equity, but likewise upon social and political considerations. This is illustrated by numerous examples.

"That there is danger that this new sociological mode of thought may have

a disproportionate influence compared with the traditional element of the law is the subject of the essay in the COLUMBIA LAW REVIEW. 'Justice without law' and 'justice according to law' are contrasted as the two main forms in legal administration. Law in the sense here used means the customary traditional law as the antithesis of the undefined *jus incertum*. Having regard to the theory of the separation of powers, the essay considers three possibilities: administration of justice by the legislature, by the executive, and by a professional judiciary. By a wealth of examples, drawn from American and English legal history, the advantages of a professional judiciary are maintained against certain modern tendencies. Pound fears an undue dominance of the newer social sciences over the traditional basis of our social order, which leads him to conclude that the socialization of the law must be attained through a study of the underlying problems and not through a relapse to justice without law, in other words, an administration of 'law' without certainty.

"Pound notes acutely that this is a danger peculiar to America and England, and it does not prevail to any such degree on the continent. 'Whereas we say a rule is law because the courts apply it in the decision of causes, they say on the Continent that the courts apply the rule in the decision of causes because it is law.'

"In this he touches the dividing line for a fundamental differentiation, founded on legal history. Between the fourth and fifth stages, — those of the maturity of the law and its socialization, — there is an intermediate stage for the Continent which has been spared both England and America, a stage of codification, the thoroughgoing transformation of the law formulated in doctrinal writings and reports into comprehensive codes. These constituted an effective dam against the strongest currents of socialization, such as are not afforded by the authoritative decisions in England and America, because these may be overruled. In the earlier and undeveloped days of social sciences the danger was not so much felt. It is true the law has been sociologic at every stage of its development. For on reflection it must be clear that the whole history of law is nothing but a continuous process of socialization, that is, an eternal adaptation to changing conditions. The pace, the emphasis, however, has become quite different since the end of law is the subject of systematic criticism both by scholars and the daily press. The amount of well-founded dissatisfaction which we produce was not dreamt of in the past. That we yield to such dissatisfaction is undoubtedly a step forward, but a step that is beginning to get uncomfortable. Radical socialistic tendencies have appeared rather late in America, but they are beginning to arouse very serious concern. Thus the late American ambassador to Berlin, David Jayne Hill, notes that formerly people were apt to regard legal institutions as a fixed Newtonian planetary system, while now it is regarded as a continuous process of Darwinian development without, however, granting to the law the deliberate development of Darwin's evolution (see 'Taking Soundings,' by David Jayne Hill, North American Review, May, 1914). However, one cannot wave aside the pressure of ameliorating change which has its source in the sociological thought of our day. With us it drives toward a certain 'unshackling' of jurisprudence; in other words, a freer treatment of the traditional material. Perhaps in England and America it will so far affect usage that they will finally overcome their inherited dislike of codes in order to erect some sort of dam for the protection of the traditional elements of the law. Very likely, however, such codes will there be very sparing in the use of definite rules and will permit of considerable flexibility in application. If this should come to pass, the two great juristic branches of European civilization, — the Anglo-American and the continental European, — will be compelled to meet one another half way. In any case one can learn much from the other. Pound's stimulating essays certainly demonstrate that." F. F.